IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4832 of 1987

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

P C JANI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4832 of 1987

MR YN OZA for Petitioner No. 1

MR IS SUPEHIA for Petitioner No. 1

MR KP RAVAL A.G.P. for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 02/08/2004

ORAL JUDGEMENT

1.0. The petitioner by way of this petition has prayed that the respondents be directed to promote him to the post of Circle Inspector with retrospective effect from

the year 1971 and further to consider his case for promotion to the post of Circle Officer with retrospective effect i.e. when Shri K.M. Parmar came to be promoted in the year 1976.

2.0. The short facts of the case are that the petitioner was originally appointed as Talati-cum-Mantri on 6th October, 1949 and was confirmed on 21st January, 1959. The case of the petitioner is that though one Shri Parmar is junior to him, he was promoted to the post of Circle Inspector. The say of the petitioner is that the criteria for promotion is only seniority and not seniority-cum-merit, because it is a promotion from Class-III post to a higher Class-II post and it is settled principle of law by catena of decision that promotion to Class-II post should be made as per the criteria which is either seniority or seniority-cum-merit. The petitioner further submitted that the respondents have ignored the seniority list and also the necessary requisite qualifications required for, while granting promotion to the post of Circle Officer.

2.1. It is further the case of the petitioner that though he was eligible for promotion in the year 1971, Shri Parmar was promoted to the post of Circle Inspector. The petitioner further contended that he came to be promoted to the post of Circle Officer in the year 1979. whereas Shri Parmar who was junior to him was promoted in the year 1976. The petitioner further contended that the respondents have not supplied the documents which he requested to furnish him with a view to make effective representation. Hence, he has approached this Court by way of this petition.

2.2. The respondents have filed affidavit-in-reply, wherein in paragraph 3 it is stated that when Shri Parmar was promoted as Circle Officer in the year 1976, the petitioner was not in the cadre of Circle Inspector. Therefore, it cannot be said that the seniority of the petitioner was overlooked. The respondents contended that since the petitioner was not in the feeder cadre, he cannot be given promotion to the post of Circle Officer which is a Class-II post. It is further averred that pursuant to the application of the petitioner, the Government has scrutinised the application and referred the case to the State Government and the State Government by order dated 23rd June, 1983, confirmed that the promotion given to Shri Parmar was proper and he may not be reverted back.

3.0. Having carefully gone through the record of the

petition, it appears that the petitioner has claimed the benefits with retrospective effect i.e. from the year 1971, on 16th June, 1987, almost after 16 years. It further appears that when the matter was heard on 14th July, 2004, Mr. Supehia had sought time to file rejoinder and today, the petitioner has come out with all documents, which he could have produced at the time of filing of the petition. From the rejoinder, it appears that on 12th April, 1983, the application of the petitioner for supplying the documents was rejected and the said fact is also not disclosed in the petition.

3.1. However, looking to the facts and circumstances of the case, in my opinion, the prayer of the petitioner claiming deemed date is misconceived inasmuch as Shri Parmar was promoted as Circle Inspector in the year 1971 and as per the record, the petitioner has objected for the first time on 25th February, 1980 and also when he was promoted to the post of Circle Inspector in the year 1979, Shri Parmar was already promoted to the post of Circle Officer in the year 1976. Thus, after a lapse of so many years, this Court will not disturb the promotion which was granted to Shri Parmar.

3.2. At this stage Mr. Supehia submitted that appropriate direction may be given for granting the benefit of deemed date to the petitioner or supernumerary post may be created.

3.3. In view of that Mr. Supehia has relied upon the decision of the Apex Court in the case of R.S. Deodhar v. State of Maharashtra reported in A.I.R. 1974 S.C. p. 259, wherein the Apex Court has observed as under :-

> "It may also be noted that the principle on which the Court proceeds in refusing relief to the petitioner on ground of laches or delay is that the rights which have accrued to others by reason of the delay in filing the petition should not be allowed to be disturbed unless there was reasonable explanation for the delay. It may be noticed that the claim for enforcement of the fundamental right of equal opportunity under Article 16 is itself a fundamental right guaranteed under Article 32 and this Court which has been assigned the role of a sentinel on the qui viva for protection of the fundamental rights cannot easily allow itself to be persuaded to refuse relief solely on the jejune ground of laches, delay.

3.4. As against that Mr. Bhate has relied upon the decision of the Apex Court in the case of Bimlesh Tanwar v. State of Haryana & ors. reported in (2003) 5 S.C.C. p.604 and more particularly Para 54 of the said decision which reads as under;

"54. Furthermore, it is now well settled that a settled seniority position should not be unsettled. The respondents had already been posted to the post of Additiional District Judge. As would appear from the report of the Sub-Committee that the seniority list was published in the year 1992. Representations were, however, made only in the year 1997 which was rejected by the High Court on 22/08/97. The writ petition was filed in March 1998 which was dismissed by reason of the impugned judgment dated 18/08/99."

4.0. However, looking to the peculiar facts and circumstances of the case, and in view of the decisions referred hereinabove, in my opinion, such relief or order cannot be issued, in view of the fact that the petitioner himself was not vigilant about his right and also he has not approached the higher authority or this Court at the relevant time. Therefore no indulgence or discretionary power shall be exercised in favour of the petitioner. Further if such relief is granted, then, the seniority of Shri Parmar will be disturbed and the petitioner will be required to pay salary and other benefits for without performing the duty.

4.1. In the result, there is no merit in this petition. Hence, the petition is dismissed. Rule is discharged with no order as to costs.

[K.S. JHAVERI, J.]

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